



General Assembly

January Session, 2007

Substitute Bill No. 7125

* _____ HB07125ENV _____ 031407 _____ *

**AN ACT CONCERNING UNDERGROUND STORAGE TANKS,
DEMONSTRATION PROJECTS, INLAND WETLANDS AGENCIES,
AQUACULTURE STRUCTURES AND SAND REMOVAL.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-449o of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective July 1, 2007*):

3 (a) As used in this section:

4 (1) "Double-walled underground storage tank" means an
5 underground storage tank that is listed by Underwriters Laboratories,
6 Incorporated and that is constructed using two complete shells to
7 provide both primary and secondary containment, and having a
8 continuous three-hundred-sixty degree interstitial space between the
9 two shells which interstitial space shall be continuously monitored
10 using inert gas or liquid, vacuum monitoring, electronic monitoring,
11 mechanical monitoring or any other monitoring method approved in
12 writing by the commissioner before being installed or used;

13 (2) "Double-walled underground storage tank system" means one or
14 more double-walled underground storage tanks connected by double-
15 walled piping and utilizing double-walled piping to connect the
16 underground storage tank to any associated equipment;

17 (3) "Hazardous substance" means a substance defined in Section

18 101(14) of the Comprehensive Environmental Response,
19 Compensation and Liability Act of 1980, but does not include any
20 substance regulated as a hazardous waste under subsection (c) of
21 section 22a-449 or any mixture of such substances and petroleum;

22 (4) "Petroleum" means crude oil, crude oil fractions and refined
23 petroleum fractions, including gasoline, kerosene, heating oils and
24 diesel fuels;

25 (5) "Underground storage tank" means a tank or combination of
26 tanks, including underground pipes connected thereto, used to contain
27 an accumulation of petroleum or hazardous substances, whose volume
28 is ten per cent or more beneath the surface of the ground, including the
29 volume of underground pipes connected thereto; and

30 (6) "Underground storage tank system" means an underground
31 storage tank and any associated ancillary equipment and containment
32 system, including, but not limited to, satellite piping, containment
33 sumps, dispensers and dispenser pans or other comparable
34 underdispenser spill containment.

35 (b) No person or municipality shall install, on or after October 1,
36 2003, an underground storage tank system and no person or
37 municipality shall operate or use, an underground storage tank system
38 installed after October 1, 2003, unless such underground storage tank
39 system is a double-walled underground storage tank system. This
40 section shall not apply to a residential underground storage tank
41 system, as defined in section 22a-449a. On or after January 1, 2008, no
42 person or municipality shall install an underground storage tank
43 system, or operate or use an underground storage tank system
44 installed after January 1, 2008, unless such underground storage tank
45 system is equipped with liquid-tight and vapor-tight sumps with
46 electronic leak detectors and dispenser pans or other comparable
47 underdispenser spill containment with electronic leak detectors. No
48 person or municipality shall have an underground storage tank
49 system's containment sump, dispenser or underdispenser spill

50 containment repaired on or after January 1, 2008, to restore said
51 components to operating condition without equipping said
52 underground storage tank system with liquid-tight and vapor-tight
53 sumps with electronic leak detectors and dispenser pans or other
54 comparable underdispenser spill containment with electronic leak
55 detectors.

56 Sec. 2. (NEW) (*Effective October 1, 2007*) The Commissioner of
57 Environmental Protection may issue a license for a demonstration
58 project for any activity regulated by the commissioner under chapter
59 446d of the general statutes provided the commissioner determines
60 that such demonstration project (1) is necessary to research, develop or
61 promote methods and technologies of solid waste management which
62 are consistent with the goals of the state solid waste management plan;
63 (2) does not pose a significant risk to human health or the
64 environment; and (3) is not inconsistent with the federal Water
65 Pollution Control Act, the federal Rivers and Harbors Act, the federal
66 Clean Air Act or the federal Resource Conservation and Recovery Act.
67 An application for such license shall be on a form prescribed by the
68 commissioner, accompanied by a fee of one thousand dollars and shall
69 provide such information as the commissioner deems necessary. Any
70 person applying for such license shall not commence the project prior
71 to the commissioner's written approval. The commissioner may
72 impose conditions upon such license as deemed necessary to
73 adequately protect human health and the environment or to ensure
74 project success and shall be valid for a period of not more than two
75 years. The commissioner may renew such license provided the total
76 period of licensure does not exceed five years. The commissioner may
77 order summary suspension of any such license in accordance with
78 subsection (c) of section 4-182 of the general statutes. Notwithstanding
79 the renewal process, any person may seek, or the commissioner may
80 require, that the project be sanctioned under a permit pursuant to
81 chapter 446d of the general statutes.

82 Sec. 3. Subdivision (1) of subsection (a) of section 22a-471 of the

83 general statutes is repealed and the following is substituted in lieu
84 thereof (*Effective from passage*):

85 (a) (1) If the commissioner determines that pollution of the
86 groundwaters has occurred or can reasonably be expected to occur and
87 the Commissioner of Public Health determines that the extent of
88 pollution creates or can reasonably be expected to create an
89 unacceptable risk of injury to the health or safety of persons using such
90 groundwaters as a public or private source of water for drinking or
91 other personal or domestic uses, the Commissioner of Environmental
92 Protection shall, as funds from the emergency spill response account
93 established by section 22a-451 allow, arrange for the short-term
94 provision of potable drinking water to those residential buildings and
95 elementary and secondary schools affected by such pollution, or at the
96 commissioner's discretion, to health care, child care or elder care
97 facilities or institutions affected by such pollution until either [he] the
98 commissioner issues an order pursuant to this section requiring the
99 provision of such short-term supply and the recipient complies with
100 such order or a long-term supply of potable drinking water has been
101 provided, whichever is earlier. In determining if pollution creates an
102 unacceptable risk of injury, the Commissioner of Public Health shall
103 balance all relevant and substantive facts and inferences and shall not
104 be limited to a consideration of available statistical analysis but shall
105 consider all of the evidence presented and any factor related to human
106 health risks. The commissioner may issue an order to the person or
107 municipality responsible for such pollution requiring that potable
108 drinking water be provided to all persons affected by such pollution. If
109 the commissioner finds that more than one person or municipality is
110 responsible for such pollution, [he] the commissioner shall attempt to
111 apportion responsibility if [he] the commissioner determines that
112 apportionment is appropriate. If [he] the commissioner does not
113 apportion responsibility, all persons and municipalities responsible for
114 the pollution of the groundwaters shall be jointly and severally
115 responsible for the providing of potable drinking water to persons
116 affected by such pollution. If the commissioner determines that the

117 state or an agency or department of the state is responsible in whole or
118 in part for the pollution of the groundwaters, such agency or
119 department shall prepare or arrange for the preparation of an
120 engineering report and shall provide or arrange for the provision of a
121 long-term potable drinking water supply. If the commissioner is
122 unable to determine the person or municipality responsible or [if he]
123 determines that the responsible persons have no assets other than land,
124 buildings, business machinery or livestock and are unable to secure a
125 loan at a reasonable rate of interest to provide potable drinking water,
126 [he] the commissioner may prepare or arrange for the preparation of
127 an engineering report and provide or arrange for the provision of a
128 long-term potable drinking water supply or [he] may issue an order to
129 the municipality wherein groundwaters unusable for potable drinking
130 water are located requiring that short-term provision of potable
131 drinking water be made to those existing residential buildings and
132 elementary and secondary schools affected by such pollution, or at the
133 commissioner's discretion, to health care, child care or elder care
134 facilities or institutions affected by such pollution and that long-term
135 provision of potable drinking water be made to all persons affected by
136 such pollution. For purposes of this section, "residential building"
137 means any house, apartment, trailer, mobile manufactured home or
138 other structure occupied by individuals as a dwelling, except a non-
139 owner-occupied hotel or motel or a correctional institution.

140 Sec. 4. Section 22a-42 of the general statutes is repealed and the
141 following is substituted in lieu thereof (*Effective from passage*):

142 (a) To carry out and effectuate the purposes and policies of sections
143 22a-36 to 22a-45a, inclusive, it is hereby declared to be the public policy
144 of the state to require municipal regulation of activities affecting the
145 wetlands and watercourses within the territorial limits of the various
146 municipalities or districts.

147 (b) Any municipality may acquire wetlands and watercourses
148 within its territorial limits by gift or purchase, in fee or lesser interest
149 including, but not limited to, lease, easement or covenant, subject to

150 such reservations and exceptions as it deems advisable.

151 (c) On or before July 1, 1988, each municipality shall establish an
152 inland wetlands agency or authorize an existing board or commission
153 to carry out the provisions of sections 22a-36 to 22a-45, inclusive,
154 except that, on or after the effective date of this section, no
155 municipality may authorize a municipal planning, municipal zoning
156 or municipal planning and zoning commission to carry out the
157 provisions of sections 22a-36 to 22a-45, inclusive. Any such
158 commission so authorized prior to the effective date of this section,
159 may continue to carry out the provisions of sections 22a-36 to 22a-45,
160 inclusive. Each municipality, acting through its legislative body, may
161 authorize any board or commission, as may be by law authorized to
162 act, or may establish a new board or commission to promulgate such
163 regulations, in conformity with the regulations adopted by the
164 commissioner pursuant to section 22a-39, as are necessary to protect
165 the wetlands and watercourses within its territorial limits. The
166 ordinance establishing the new board or commission shall determine
167 the number of members and alternate members, the length of their
168 terms, the method of selection and removal and the manner for filling
169 vacancies in the new board or commission. No member or alternate
170 member of such board or commission shall participate in the hearing
171 or decision of such board or commission of which he is a member
172 upon any matter in which he is directly or indirectly interested in a
173 personal or financial sense. In the event of such disqualification, such
174 fact shall be entered on the records of such board or commission and
175 replacement shall be made from alternate members of an alternate to
176 act as a member of such commission in the hearing and determination
177 of the particular matter or matters in which the disqualification arose.
178 For the purposes of this section, the board or commission authorized
179 by the municipality or district, as the case may be, shall serve as the
180 sole agent for the licensing of regulated activities.

181 (d) At least one member of the inland wetlands agency or staff of
182 the agency shall be a person who has completed the comprehensive

183 training program developed by the commissioner pursuant to section
184 22a-39. Failure to have a member of the agency or staff with training
185 shall not affect the validity of any action of the agency. The
186 commissioner shall annually make such program available to one
187 person from each town without cost to that person or the town. Each
188 inland wetlands agency shall hold a meeting at least once annually at
189 which information is presented to the members of the agency which
190 summarizes the provisions of the training program. The commissioner
191 shall develop such information in consultation with interested persons
192 affected by the regulation of inland wetlands and shall provide for
193 distribution of video presentations and related written materials which
194 convey such information to inland wetlands agencies. In addition to
195 such materials, the commissioner, in consultation with such persons,
196 shall prepare materials which provide guidance to municipalities in
197 carrying out the provisions of subsection (f) of section 22a-42a.

198 (e) Any municipality, pursuant to ordinance, may act through the
199 board or commission authorized in subsection (c) of this section to join
200 with any other municipalities in the formation of a district for the
201 regulation of activities affecting the wetlands and watercourses within
202 such district. Any city or borough may delegate its authority to
203 regulate inland wetlands under this section to the town in which it is
204 located.

205 (f) Municipal or district ordinances or regulations may embody any
206 regulations promulgated hereunder, in whole or in part, or may
207 consist of other ordinances or regulations in conformity with
208 regulations promulgated hereunder. Any ordinances or regulations
209 shall be for the purpose of effectuating the purposes of sections 22a-36
210 to 22a-45, inclusive, and, a municipality or district, in acting upon
211 ordinances and regulations shall incorporate the factors set forth in
212 section 22a-41.

213 (g) Nothing contained in this section shall be construed to limit the
214 existing authority of a municipality or any boards or commissions of
215 the municipality, provided the commissioner shall retain authority to

216 act on any application filed with said commissioner prior to the
217 establishment or designation of an inland wetlands agency by a
218 municipality.

219 Sec. 5. Subsection (d) of section 22a-361 of the general statutes is
220 repealed and the following is substituted in lieu thereof (*Effective*
221 *October 1, 2007*):

222 (d) (1) The Commissioner of Environmental Protection may issue a
223 general permit for any minor activity regulated under sections 22a-28
224 to 22a-35, inclusive, or sections 22a-359 to 22a-363f, inclusive, if the
225 commissioner determines that such activity would (A) cause minimal
226 environmental effects when conducted separately, (B) cause only
227 minimal cumulative environmental effects, (C) not be inconsistent with
228 the considerations and the public policy set forth in sections 22a-28 to
229 22a-35, inclusive, and section 22a-359, as applicable, (D) be consistent
230 with the policies of the Coastal Management Act, and (E) constitute an
231 acceptable encroachment into public lands and waters. Such activities
232 may include routine minor maintenance and routine minor repair of
233 existing structures, fill, obstructions, encroachments or excavations;
234 substantial maintenance consisting of rebuilding, reconstructing or
235 reestablishing to a preexisting condition and dimension any structure,
236 fill, obstruction, encroachment or excavation; maintenance dredging of
237 areas which have been dredged and continuously maintained as
238 serviceable; activities allowed pursuant to a perimeter permit; the
239 removal of structures, derelict vessels, debris, rubbish or similar
240 discarded material or unauthorized fill material; minor alterations or
241 amendments to authorized activities consistent with the authorization
242 for such activities; activities which have been required or allowed by
243 an order of the commissioner; open water marsh management by or
244 under the supervision of the Department of Public Health or
245 Department of Environmental Protection; conservation activities of or
246 under the supervision or direction of the Department of
247 Environmental Protection; construction of individual residential docks
248 which do not create littoral or riparian conflicts, navigational

249 interference, or adverse impacts to coastal resources as defined by
250 section 22a-93, which are not located in tidal wetlands as defined by
251 section 22a-29 and which extend no further than forty feet waterward
252 of mean high water or to a depth of minus four feet mean low water,
253 whichever point is more landward; installation of scientific measuring
254 or monitoring devices; survey activities including excavation of test
255 pits and core sampling and driving of test pilings; construction of
256 utility lines; aquacultural activities; and installation and removal of
257 small seasonal structures including floats and moorings. Any person
258 conducting an activity for which a general permit has been issued shall
259 not be required to obtain an individual permit or certificate under any
260 other provision of sections 22a-28 to 22a-35, inclusive, or sections 22a-
261 359 to 22a-363f, inclusive, for that activity except as provided in
262 subdivision (3) of this subsection. A general permit shall clearly define
263 the activity covered thereby and may include such conditions and
264 requirements as the commissioner deems appropriate, including, but
265 not limited to, construction timing, methodologies and durations,
266 resource protection practices, management practices, and verification
267 and reporting requirements. The general permit may require any
268 person proposing to conduct any activity under the general permit to
269 register such activity, including obtaining approval from the
270 commissioner, before the general permit becomes effective as to such
271 activity. Registrations and applications for approval under the general
272 permit shall be submitted on forms prescribed by the commissioner.
273 Any approval by the commissioner under a general permit may
274 include conditions specific to the proposed activity to ensure
275 consistency with the requirements for issuance of the general permit.
276 The commissioner shall prepare, and annually amend, a list of holders
277 of general permits under this section, which list shall be made
278 available to the public.

279 (2) Notwithstanding any other procedures specified in sections 22a-
280 28 to 22a-35, inclusive, and sections 22a-359 to 22a-363f, inclusive, any
281 regulations adopted thereunder, and chapter 54, the commissioner
282 may issue a general permit in accordance with the following

283 procedures: (A) The commissioner shall publish in a newspaper
284 having a substantial circulation in the affected area or areas notice of
285 intent to issue a general permit; (B) the commissioner shall allow a
286 comment period of thirty days following publication of such notice
287 during which interested persons may submit written comments
288 concerning the permit to the commissioner and the commissioner shall
289 hold a public hearing if, within said comment period, he receives a
290 petition signed by at least twenty-five persons; (C) the commissioner
291 may not issue the general permit until after the comment period; (D)
292 the commissioner shall publish notice of any permit issued in a
293 newspaper having substantial circulation in the affected area or areas;
294 and (E) summary suspension may be ordered in accordance with
295 subsection (c) of section 4-182. Any person may request that the
296 commissioner issue, modify or revoke a general permit in accordance
297 with this subsection.

298 (3) Subsequent to the issuance of a general permit, the commissioner
299 may require any person whose activity is or may be covered by the
300 general permit to apply for and obtain an individual permit or
301 certificate under the provisions of sections 22a-28 to 22a-35, inclusive,
302 or sections 22a-359 to 22a-363f, inclusive, for all or any portion of the
303 activities covered by the general permit, if the commissioner
304 determines that an individual permit is necessary to assure consistency
305 with purposes and policies of such sections, and the Coastal
306 Management Act. The commissioner may require an individual permit
307 under this subdivision in cases including, but not limited to, the
308 following: (A) The permittee is not in compliance with the conditions
309 of the general permit; (B) an individual permit or certificate is
310 appropriate because of circumstances specific to the site; (C)
311 circumstances have changed since the time the general permit was
312 issued so that the permitted activity is no longer acceptable under the
313 general permit; or (D) a change has occurred in relevant law. The
314 commissioner may require an individual permit or certificate under
315 this section only if the affected person has been notified in writing that
316 an individual permit or certificate is required. The notice shall include

317 a brief statement of the reasons for the decision.

318 (4) The commissioner may adopt regulations, in accordance with the
319 provisions of chapter 54, to carry out the purposes of this section.

320 [(5) Notwithstanding any provision of sections 22a-359 to 22a-363f,
321 inclusive, pending issuance of a general permit for aquaculture
322 activities by the commissioner in accordance with this section, no
323 permit or certificate shall be required for the placement, maintenance
324 or removal of (A) individual structures used for aquaculture, as
325 defined in section 22-416, including, but not limited to, cages or bags,
326 which are located on designated state or municipal shellfish beds
327 which structures create no adverse impacts on coastal resources or
328 navigation over their location or (B) any buoys used to mark such
329 structures. Upon issuance of a general permit for aquaculture activities
330 in accordance with this section, any aquaculture activities shall comply
331 with the terms of such general permit or other applicable provisions of
332 sections 22a-359 to 22a-363f, inclusive.]

333 Sec. 6. Subsection (e) of section 22a-361 of the general statutes is
334 repealed and the following is substituted in lieu thereof (*Effective*
335 *October 1, 2007*):

336 (e) No person, firm or corporation, public, municipal or private,
337 who removes sand, gravel or other material lying waterward of the
338 mean high water mark of the tidal, coastal or navigable waters of the
339 state pursuant to a permit issued under this section on or after October
340 1, 1996, shall make any beneficial or commercial use of such sand,
341 gravel or other material except upon payment to the state of a fee of
342 four dollars per cubic yard of such sand, gravel and other materials
343 unless otherwise exempted from payment under this section. Such
344 payment shall be made at times and under conditions specified by the
345 commissioner in such permit. No fee shall be assessed for (1) the
346 performance of such activities on land which is not owned by the state,
347 (2) the use of sand, gravel or other materials for beach restoration
348 projects, or (3) ultimate disposal of such sand, gravel or other materials

349 which does not result in an economic benefit to any person, and the
 350 commissioner may waive the fee for the beneficial or commercial use
 351 of sand, gravel or other materials that have been decontaminated or
 352 processed to meet applicable environmental standards for reuse. For
 353 the purposes of this section, "beneficial or commercial use" includes,
 354 but is not limited to, sale or use of sand, gravel or other materials for
 355 construction, aggregate, fill or landscaping.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2007</i>	22a-449o
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>from passage</i>	22a-471(a)(1)
Sec. 4	<i>from passage</i>	22a-42
Sec. 5	<i>October 1, 2007</i>	22a-361(d)
Sec. 6	<i>October 1, 2007</i>	22a-361(e)

ENV *Joint Favorable Subst.*